

HB0075S01 compared with HB0075

~~{deleted text}~~ shows text that was in HB0075 but was deleted in HB0075S01.

Inserted text shows text that was not in HB0075 but was inserted into HB0075S01.

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Senator Todd Weiler proposes the following substitute bill:

SEX OFFENDER REGISTRY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: ~~{ }~~ Luz Escamilla

LONG TITLE

General Description:

This bill reduces the offense level for individuals under 21 years old for certain crimes and clarifies when an individual ~~{ convicted of the offense of unlawful sexual activity with a minor }~~ is required to register as a sex offender.

Highlighted Provisions:

This bill:

- ▶ clarifies that an individual convicted of the offense of unlawful sexual activity with a minor is required to register as a sex offender unless the individual was less than four years older than the minor at the time of the offense;
- ▶ reduces the offense level for an individual who is under 21 years old and who commits the crime of unlawful sexual activity with a minor;
- ▶ provides that an individual who is under 21 years old and who commits the crime of

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unlawful sexual activity with a minor does not have to register as a sex offender;

and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-401, as last amended by Laws of Utah 2017, Chapter 397

77-41-102, as last amended by Laws of Utah 2017, Chapter 434

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 76-5-401 is amended to read:

76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties --

Evidence of age raised by defendant.

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person 18 years ~~[of age]~~ old or older commits unlawful sexual activity with a minor if, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:

(a) has sexual intercourse with the minor;

(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(3) (a) Except under Subsection (3)(b) or (c), a violation of Subsection (2) is a third degree felony.

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(b) If the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, the offense is a class B misdemeanor. An offense under this Subsection (3)(b) is not subject to registration under Subsection 77-41-102(17)(a)(iii).

(c) If the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant was younger than 21 years old at the time the sexual activity occurred, the offense is a class A misdemeanor. An offense under this Subsection (3)(c) is not subject to registration under Section 77-41-102(17)(a)(iii).

Section ~~77-41-102~~2. Section **77-41-102** is amended to read:

77-41-102. Definitions.

As used in this chapter:

(1) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in section 53-10-201.

(2) "Business day" means a day on which state offices are open for regular business.

(3) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.

(4) "Department" means the Department of Corrections.

(5) "Division" means the Division of Juvenile Justice Services.

(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any

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property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.

(9) "Kidnap offender" means any [~~person~~] individual other than a natural parent of the victim who:

(a) has been convicted in this state of a violation of:

(i) Subsection 76-5-301(1)(c) or (d), kidnapping;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

(v) attempting, soliciting, or conspiring to commit any felony offense listed in

Subsections (9)(a)(i) through (iv);

(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(c) (i) is required to register as a kidnap offender in any other jurisdiction of original conviction, who is required to register as a kidnap offender by any state, federal, or military court, or who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (9), or any substantially equivalent offense in another jurisdiction, or as a result of the conviction, is required to register in the [~~person's~~] individual's state of residence;

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (9); or

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(f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the ~~[person's]~~ individual's 21st birthday.

(10) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (17).

(12) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

(b) does not include date of birth, social security number, PIN number, or Internet passwords.

(13) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(14) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

(15) "Registration website" means the Sex and Kidnap Offender Notification and Registration website described in Section 77-41-110 and the information on the website.

(16) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12-month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.

(17) "Sex offender" means any ~~[person]~~ individual:

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

(ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10, 2011;

(iii) ~~[a felony violation of]~~ Section 76-5-401, unlawful sexual activity with a minor, except as provided in Subsection 76-5-401(3)(b) or (c);

(iv) Section 76-5-401.1, sexual abuse of a minor, except ~~[under]~~ as provided in Subsection 76-5-401.1(3)(a);

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- (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
 - (vi) Section 76-5-402, rape;
 - (vii) Section 76-5-402.1, rape of a child;
 - (viii) Section 76-5-402.2, object rape;
 - (ix) Section 76-5-402.3, object rape of a child;
 - (x) a felony violation of Section 76-5-403, forcible sodomy;
 - (xi) Section 76-5-403.1, sodomy on a child;
 - (xii) Section 76-5-404, forcible sexual abuse;
 - (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
 - (xiv) Section 76-5-405, aggravated sexual assault;
 - (xv) Section 76-5-412, custodial sexual relations, when the [person] individual in custody is younger than 18 years of age, if the offense is committed on or after May 10, 2011;
 - (xvi) Section 76-5b-201, sexual exploitation of a minor;
 - (xvii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
 - (xviii) Section 76-7-102, incest;
 - (xix) Section 76-9-702, lewdness, if the [person] individual has been convicted of the offense four or more times;
 - (xx) Section 76-9-702.1, sexual battery, if the [person] individual has been convicted of the offense four or more times;
 - (xxi) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;
 - (xxii) Section 76-9-702.5, lewdness involving a child;
 - (xxiii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
 - (xxiv) Section 76-10-1306, aggravated exploitation of prostitution; or
 - (xxv) attempting, soliciting, or conspiring to commit any felony offense listed in this Subsection (17)(a);
- (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (17)(a) and who is:
- (i) a Utah resident; or
 - (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of

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10 or more days, regardless of whether the offender intends to permanently reside in this state;

(c) (i) who is required to register as a sex offender in any other jurisdiction of original conviction, who is required to register as a sex offender by any state, federal, or military court, or who would be required to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) who, in any 12-month period, is in the state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) who is a nonresident regularly employed or working in this state or who is a student in this state and was convicted of one or more offenses listed in Subsection (17)(a), or any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required to register in the [~~person's~~] individual's jurisdiction of residence;

(e) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or more offenses listed in Subsection (17)(a); or

(f) who is adjudicated delinquent based on one or more offenses listed in Subsection (17)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the [~~person's~~] individual's 21st birthday.

(18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.